



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Craig Bray
Disciplinary Counsel

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May 22, 2007

Ronald R. Carpenter, Supreme Court Clerk
Supreme Court of Washington
Temple of Justice
P.O. Box 40929
Olympia WA 98504-0929

RECEIVED
SUPREME COURT
CLERK OF WASHINGTON
07 MAY 24 AM 8:15
BY RONALD R. CARPENTER
CLERK

Re: In re Fernando E. Perez Pena,
Supreme Court Number 200,428-8

Dear Mr. Carpenter:

At oral argument, the Court asked for information regarding the date the initial grievance against Mr. Perez Pena was filed with the Association. Mr. Perez Pena, by letter dated May 18, 2007, provided some information on this issue. This letter is intended to further satisfy the Court's inquiry.

According to our records, the grievance against Mr. Perez Pena was originally filed on August 13, 2001. The Association deferred the grievance by letter dated October 2, 2001, pending resolution of the related criminal matter.¹ (See attached). The deferral letter asked Mr. Perez Pena to notify the Association when the criminal litigation had concluded. He so notified the Association on August 25, 2004, after he had dismissed his appeal of the assault conviction and completed serving his sentence. (See attached). The Association then moved the grievance from deferral to investigation status. The matter was ordered to hearing on June 21, 2005.

This information was not contained in the record of appeal as Mr. Perez Pena had not previously raised the issue of delay as a mitigating factor. Had he raised the issue at hearing, he would have had the burden of proving that this mitigating factor should be applied. In re Disciplinary Proceeding Against Carpenter, ___ Wn.2d ___, 155 P.3d 937, 943 (2007). The Association then would have had an opportunity to explain the passage of time and present defenses, such as lack of harm or his contribution to any delay. Since this issue was not presented at hearing, the Court should decline to reach it. In re Disciplinary Proceeding Against Diamondstone, 153 Wn.2d 430, 442, 105 P.3d 1 (2005).

¹ See In re Disciplinary Proceeding Against Gillingham, 126 Wn.2d 454, 458 n.3, 896 P.2d 656 (1995) (commenting that the Association's deferral policy is a sensible one that conserves the Association's limited resources).

Ronald R. Carpenter
May 22, 2007
Page 2 of 2

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be 'CB' or 'Craig Bray', written in a cursive style.

Craig Bray
Disciplinary Counsel

Enclosures

cc: Anthony Savage (Lawyer for Mr. Perez Pena)
Public Bar File



WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Managing Disciplinary Counsel

October 2, 2001

Arturo and Cecilia Garcia
1004 NW 130th
Seattle WA 98177

Re: Your grievance against lawyer Fernando E. Perez-Pena
WSBA File: 01-01364

Dear Mr. and Mrs. Garcia:

We have reviewed your grievance dated July 30, 2001 against lawyer Fernando E. Perez-Pena and a letter to us from Mr. Perez-Pena dated September 15, 2001. In his response to your grievance, Mr. Perez-Pena discusses related criminal litigation.

It is the policy of the Washington State Bar Association Disciplinary Board to defer disciplinary investigations pending the resolution of litigation when the allegations are substantially similar to those in the litigation and when such deferral will not endanger the public. We believe the best course of action at this time is to follow that policy and to defer the disciplinary investigation of this matter.

If you disagree with the decision to defer an investigation, this matter will be referred to a Review Committee of the Disciplinary Board pursuant to Rule 2.4(d)(2) of the Rules for Lawyer Discipline with our recommendation that deferral is appropriate. Please inform us when the litigation is concluded and we will consider investigation of your grievance.

Sincerely,

A handwritten signature in cursive script, reading "Felice P. Congalton", is positioned above the typed name.

Felice P. Congalton
Managing Disciplinary Counsel

FPC:sjk
cc: Fernando E. Perez-Pena

**Fernando E. Pérez Peña, Attorney-at-Law**

Suite 340 Broderick Bldg., 615 Second Ave., Seattle, WA 98104-2200

Tel.: (206) 464-1133 • Fax: (206) 464-0440 • Cell: (206) 380-3927

**FAX COVER SHEET**August 25th, 2004
Original will not follow via U.S.P.S..**RECEIVED**

AUG 25 2004

WSBA OFFICE OF
DISCIPLINARY COUNSEL

To: Mr. Robert Henry
Of: Washington State Bar Association
No: (206) 727 8325

DOCUMENTS**NUMBER OF PAGES**
(Not counting this cover sheet)

1. Printout of Municipal Court Entry for 7/3/2003 1

Total Number of Pages (including this cover sheet) 2

I know that I have a more formal document somewhere in my files but I have not been able to locate it on short notice. Therefore, I went to Seattle Muni Court records and one of the clerks helped me to locate this. I trust it is enough.

If you have any need for more documentation, please let me know.M

;Thanks again!

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IMMEDIATELY AT: (206) 464-1133**

CASE: List Docket Violations Exit
Press 'L' to return to list, 'V' to see violations, 'E' to exit

pa01003b.per

Name : PEREZ-PENA		Case Summary	
Case Number...	405294	FERNANDO	E
Filing Date...	07/30/2001	Hearing Date	08/17/1924 M
		Hearing Time	07/03/2003
		Hearing Type	0900
			DISPO Court 1102

Ticket No.	Viol Dt	Violation Code	Officer
Chrg # 1	05/31/2001	12A060100	6276 ESPINOZA
Finding:	ASSAULT		
		Disp:	DISMISSED WITH PREJUDICE
Chrg # 1	05/31/2001	12A060100	6279 MACDONALD
Finding:	ASSAULT		
		Disp:	DISMISSED WITH PREJUDICE
		Due to Court:	\$0.00
		Due to Collection:	None